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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/963,742	09/27/2001	Rob R. Montgomery	35646-175183	9308
26694	7590	05/01/2007		
VENABLE LLP P.O. BOX 34385 WASHINGTON, DC 20043-9998			EXAMINER AKINTOLA, OLABODE	
			ART UNIT 3691	PAPER NUMBER
			MAIL DATE 05/01/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/963,742

Applicant(s)

MONTGOMERY, ROB R.

Examiner

Olabode Akintola

Art Unit

3691

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 2-6,9-13 and 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,7,8,14-18 and 20-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>4/27/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of Group I (claims 1, 7, 8, 14-17) in the reply filed on 02/01/2007 is acknowledged. The traversal is on the ground(s) that the non-elected inventions are amended to depend on the elected independent claim and that a search of all groups could be performed without undue burden on the part of the Examiner. This is not found persuasive because the features recited still constitute independent inventions and/or species. Examiner asserts that there would be a serious burden on the Examiner if restriction is not required because the inventions require a different field of search (see MPEP § 808.02).

The requirement is still deemed proper and is therefore made FINAL.

It is noted that claims 2, 4, 6, 9-11 and 13 are now dependent upon claim 1. Thus, these claims are withdrawn from consideration as drawn to a non-elected invention. Claims 18-21 are newly added. Claims 18 and 20-23 will be considered as part of group 1, while claim 19 is hereby withdrawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 7, 8, 14, 18, 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Michael Miller, "The Complete Idiot's guide to online auctions" (Que 1999) (hereinafter referred to as "Miller") in view of Wagoner et al (USPAP 20060074792) (hereinafter referred to as "Wagoner").

Re claims 1, 7, 8, 14, 18, 22 and 23: Miller teaches method of automating an interaction between a bidder and an electronic, variable, dynamic pricing online auction service comprising of the steps of:

a. receiving a registration of a bidder at an Internet, web-enabled, bidder bidding application site (site) by creating logon credentials that are used to at least one of authenticate and/or authorize the bidder's access to the site, a portfolio of the bidder, and/or account information of the bidder (pages 133, 164);

b. receiving entered information about financial transaction instruments of the bidder, contact information including at least one of a telephone number, an email address, and/or a physical mail address, and product preferences into an auction profile of the bidder (page 133, 137);

c. receiving a search query from the bidder for a desired product from the product auctions of a plurality of auction sites including at least one of keywords, model identification, brand identification, synonyms, and unique identification, using at least one of a search agent, a persistent search agent, and/or a meta-search agent, and providing returned auctions, including retrieving current status of the product auctions and presenting the current status to the bidder (pages 143-147);

d. receiving a selection of one or more of the returned auctions to store in the portfolio of the bidder for tracking by one or more scan agents and for bidding by one or more bid proxies (pages 33-36, 145);

e. providing monitoring by the one or more scan agents of temporal progression of the at least one plurality of product auctions, and notifying the bidder via a messaging center of any changes in relevant aspects of the current status of any of the at least one plurality of product auctions that would prevent an initial bid from being placed by the bid proxy (pages 33-36, 193-194);

f. enabling activation of the one or more bid proxies as any auction that nears completion of the at least one product auctions, to begin placing one or more bids within bidding parameters until the completing auction is either won or lost by time of auction closing (pages 34-36, 192);

g. computing and executing another valid higher bid for a forward auction or lower bid for a reverse auction that is within the bidding parameters, if the counter-offer has been made and accepted by the auction site that is higher for the forward auction or lower for the reverse auction than the most recent bid detected by the scan agent (pages 34-36, 192).

Miller does not explicitly teach

enabling interaction between the scan agent and the bid proxy to place the bid of the bidder as close to the time of auction closing as possible and to confirm that a counter-offer has not out-bid a most recent bid of the bidder.

Wagoner teaches this limitation at sections 0040. It would have been obvious to one of ordinary skill in the art the time of the invention to modify Miller to include this limitation as taught by Wagoner. One would have been motivated to do so in order to avoid raising the price of the bid at the early stages of the auction.

Claims 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller in view of Wagoner and further in view of Hunt (US 6496855) (hereinafter referred to as "Hunt").

Re claims 20-21: Miller does not explicitly teach registering on multiple auctions site using a registration proxy. Hunt teaches this limitation (see abstract). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Miller to include this limitation. One would have been motivated to do this in order to provide a single source of data entry for bidders.

Claims 16, 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller in view of Wagoner and further in view of Rackson et al (US 6415270) (hereinafter referred to as "Rackson").

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Re claims 16, 17: Miller is as discussed above. Miller does not explicitly teach wherein the one or more persistent search agents periodically search a list of a plurality of auction sites for product auctions that correlate with preference information stored in the portfolio of the comprising:

1. creating entries by the bidder for each kind of product of which the bidder desires to be notified if an auction for a product containing this description becomes available for bidding on any and all auction sites;
 2. periodically searching, using the one or more persistent search agents, search services of the plurality of auction sites to see if a matching product can be found in listed auctions; and
 3. sending, to the bidder, a link to a found auction communicated using at least one of wired and/or wireless messaging technology, if any matches are found; and
- i. receiving at least one of definitions of programmed bidding parameters of the directed programmed bid to the bid proxy, and/or
- authorization of the bid proxy to algorithmically compute a lowest market price based on reviewing prevailing market prices for similar products as determined by information stored in a clam warehouse.

Rackson teaches these limitations at abstract, col. 23, line 56 through col. 24, line 57, col. 18, lines 49-65, col. 16, lines 3-25 and col. 14, lines 45-49. It would have been obvious to one of ordinary skill in the art the time of the invention to modify Miller to include this limitation as taught by Rackson. One would have been motivated to do so in order to generate optimal values for the bids.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miller in view of Wagoner in view of Boyd et al (US 6963854) (hereinafter referred to as "Boyd") and further in view of Schulman (US 5600632) (hereinafter referred to as "Schulman").

Re claim 15: Miller does not explicitly teach

accelerating the performance of the bid proxy by using network telemetry and/or statistical algorithms to improve the win probability of the bid, comprising:

1. testing, using a telemetry agent, the response time of an auction site to periodically ascertain temporal latency for various types of queries and/or commands;
2. optimizing balance between when to place an initial bid and when to win the auction at a best market price, using information on the response time obtained during response time testing, wherein response time information is stored in an updateable profile for each auction site and is used by the bid proxy, and wherein the telemetry information collected comprises at least one a content type, and/or a transaction type including at least one of a

query for auction status and/or a bid command, and/or a time span from a query to a response.

Boyd teaches improving win probability at col. 2, line 57 through col. 3, line 15, col. 9, lines 1-53. It would have been obvious to one of ordinary skill in the art the time of the invention to modify Miller to include this limitation as taught by Boyd. One would have been motivated to do so in order to optimize the bidding strategy.

Schulman teaches determining latency for various queries at col. 8, lines 7-23. One would have been motivated to do so for performance improvement purposes.

Examiner's Note: Examiner has cited particular portions of the references as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that the applicant, in preparing the responses, fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Conclusion

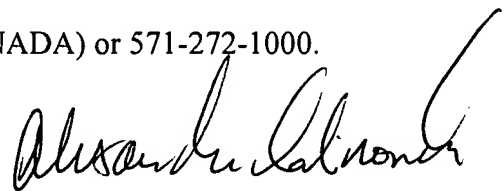
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Srinivasan (US 7047210) teaches a method and system for auctioning a product on a computer network (see Figs 3A-3M).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Olabode Akintola whose telephone number is 571-272-3629. The examiner can normally be reached on M-F 8:30AM -5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on 571-272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



OA

ALEXANDER KALINOWSKI
SUPERVISORY PATENT EXAMINER